IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6148 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHAVI GAURANG VAISHNAV

Versus

GOVT. OF GUJARAT

Appearance:

MR JM HOSHANG for Petitioners

Mr.P.K.Shukla, learned A.G.P.for Respondent No. 1

MR JR NANAVATI for Respondents Nos.2

No one has appeared for the respondent No.3 despite service.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 28/04/2000

ORAL JUDGEMENT

1. This Special Civil Application has been filed on behalf of a minor girl named Bhavi Gaurang Vaishnav, aged

3 years residing at 195, Kribhconagar, Surat through her adoptive parents Gaurang Kirtirai Vaishnav and Ms.Darshana Gaurang Vaishnav. While the girl Bhavi has been named as petitioner No.1 her adoptive parents are petitioners Nos.2 and 3.

2. The case with which the petitioners have come before this court is that petitioner No.1 was born to a woman who was a widow.The said widow handed over the custody of the petitioner No.1 to a social organisation named Shri Kasturba Stree Vikas Gruh, Jamnagar and it is this Vikas Gruh which gave her the name of 'Foram'. This female child named 'Foram' by the Vikas Gruh was kept in custody of Kokilaben Amratlal Dangi, Social Administrator of said Vikas Gruh and said Social Administrator was the guardian of the said child named 'Foram'.

3. While the said child named 'Foram' (petitioner No.1) was being brought up at the said Vikas Gruh, a couple -Gaurang Kirtirai Vaishnav and Ms.Darshana Gaurang Vaishnav approached the aforesaid organisation - Vikas Gruh to adopt the child. The said couple had married on 4.8.83 and even after number of years of their marriage they could not beget a child and after medical check up it was found that they may not get child even in future. On such approach being made by the aforesaid couple to the organisation - Vikas Gruh, as aforesaid, the Social Administrator of the said Vikas Gruh visited and inspected the house of the said couple and after inspection it was found that they were capable to adopt the child. It was decided to give the said girl, namely, Foram in adoption to the said couple and said couple agreed to take the female child 'Foram' (petitioner No.1) in adoption. The Social Administrator of the aforesaid Vikas Gruh,namely, Kokilaben Amratlal Dangi therefore moved a Civil Misc. Application No.3/98 in the Court of Extra Assistant Judge at Jamanagar seeking necessary permission for adoption of the aforesaid girl to the aforesaid couple and sought a declaration that the aforesaid organisation - Vikas Gruh was the guardian of the said girl 'Foram' and permission that she may be permitted to give said female child 'Foram' in adoption to the said couple. This Civil Misc. Application No.3/98 was allowed by the Extra Assistant Judge, Jamangar by his order dt.10.9.98 declaring that Shri Kasturba Stree Vikas Gruh, Jamangar the applicant Organisation was the guardian of the said minor female child 'Foram' (petitioner No.1) and the said organisation was also permitted to give this female child 'Foram' in adoption to Gaurang Kirtirai Vaishnav and Ms.Darshana Gaurang Vaishnav under the provisions of Hindu Adoption

and Maintenance Act. After the aforesaid order dt.10.9.98 passed by the Extra Assistant Judge, Jamangar, the adoption deed dt.28.10.98 was executed by the guardian (as declared by the Court) of the aforesaid child and the adoptive parents duly witnessed by Shri N.V.Vyas, Advocate. It is also the case of the petitioners that the said female child, namely, 'Foram' was born on 2.7.96 at Irvin Group of Hospitals, Jamanagar and the adoptive parents renamed this girl 'Foram' as 'Bhavi' and the change of her name from 'Foram' to 'Bhavi' was also published through a notice in the Government Gazette Part-II dt. 26.11.98. In this notice of change of name, name 'Foram Gaurang Vaishnav' appears at Sr.No.84 and the changed name against the said name is "Bhavi Gaurang Vaishnav" with the address Gaurang Kirtirai Vaishnav, 195/Kribhco Nagar, Surat 394515. Thus, the petitioner No.1 had acquired a new name of 'Bhavi' instead of 'Foram'.

4. Adoptive couple then moved an application dt.20.1.99 before the Municipal Corporation of Jamnagar (Birth and Death Registration Office) enclosing a copy of the birth certificate, a copy of Gujarat Government Gazette dt.26.11.98 and news item relating to the judgment of this court published in Gujarat Samachar on 5.11.98 and requested the Corporation that in the birth certificate of petitioner No.1 the change mentioned in her name as 'Bhavi Gaurang Vaishnav" and the name of her parents as Gaurang Kirtirai Vaishnav and Ms.Darshana Gaurang Vaishnav be shown. The petitioner also sent a letter dt.20.1.99 to the Social Administrator of Shri Kasturba Stree Vikas Gruh appraising all the developments with regard to the change of the name of the girl from 'Foram' to 'Bhavi', that she was required to be admitted in School and the steps taken by him for change of relevant entries in the birth certificate and sought co-operation of the said Vikas Gruh. The adoptive parents i.e. petitioners Nos.2 and 3 also sent a letter dt.17.5.99 to the concerned Secretary to the Government of Gujarat and the Registrar of Office of Death and Birth of Municipal Corporation, Jamnagar. Despite this the Corporation did not agree to the request of the petitioners and, therefore, the petitioners preferred this Special Civil Application before this Court on 17.8.99 seeking a direction against respondent Nos.1 and 2 to issue fresh birth registration certificate in respect of petitioner No.1 i.e. 'Bhavi' reflecting the names of petitioners Nos.2 and 3 therein as her parents, changing her name as 'Bhavi' from 'Foram'. On 18.8.99 Rule was issued by this court. The same was made returnable on 1.9.99 and the parties were directed to

come ready for final disposal. In response to the rule, an affidavit-in-reply dt.5.11.99 has been filed on behalf of respondent No.1.

5. On behalf of respondents Mr.P.K.Shukla, learned A.G.P. and Mr.J.R.Nanavati have submitted that for the purpose of effecting change in the date of birth or for issuing fresh certificate with the entries, as asked for, the procedure as mentioned in Circular dt.23.8.99 sent by the Commissionerate of Health, M.S. & M.E. (H.S.) issued by Government of Gujarat is required to be followed.

6. I have heard learned counsel for both the sides and have gone through the aforesaid circular dt.23.8.99. It appears from the reading of the entire circular dt.23.8.99 that this circular is essentially required to be followed in cases where the exact date of birth of such a child is not known and only in such cases, the procedure, as is mentioned in this circular, is required to be followed so as to take an order from the Magistrate and the opinion of the Medical Officer etc. Here is a case in which there is no dispute that the petitioner No.1 was born in Irvin Group of Hospitals on 2.7.96 and she had been named as 'Foram' by the Vikas Gruh where she was brought up. She was then taken in adoption as given by the Social Administrator of the Vikas Gruh to the adoptive couple i.e. petitioners Nos.2 and 3 on the basis of the Extra Assistant Judge, Jamnagar's order dt.10.9.98 passed in Civil Misc. Application No.3/98 under the provisions of the Hindu Adoption and Maintenance Act and the adoption deed was executed between the guardian of the said girl as declared by Extra Assistant Judge, Jamangar and the present adoptive parents i.e. petitioners Nos.2 and 3. The Gujarat Government Gazette is also there to show the change of her name from 'Foram' to 'Bhavi' and when there is a birth certificate on record to show that she was born on 2.7.96, in the opinion of this court no useful purpose can be served by now requiring the petitioners to follow the aforesaid procedure as per the Circular dt.23.8.99. It would be an exercise in futility as the date of birth is already ascertained and none of the facts are in dispute. Even in such cases when the exact date of birth is known and the adoption deed has been executed by the Guardian declared by the Court of Extra Assistant Judge, Jamanagar under the provisions of Hindu Adoption and Maintenance Act after regular proceedings thereunder, if the adoptive parents are thrown to follow such procedure for the purpose of seeking fresh birth certificate with the change of the relevant entries therein, it would

certainly militate against the spirit of taking such deserted or given up child in adoption and would discourage the socially spirited couples with righteous approach to go in for such adoption. Such virtuous ventures of couples with helping hands must be welcomed and they should be put to least trouble and botheration and they should not be thrown to the requirements and rigours of such procedures, which are not necessary.

What should be the Court's approach in such cases has been sufficiently indicated in a Division Bench decision of this Court in the case of Sudha Bhatt v. Secretary, Social Welfare Deptt. reported in 1998(3) G.L.R. 2430 based on a Supreme Court decision in the case of Laxmikant Pandey v. Union of India, reported in AIR 1984 SC 469. Therefore, in the facts and circumstances of this case, I do not find that the objection taken by the respondents before the Court that the petitioners herein must follow the procedure detailed out in the Circular dt.23.8.99 is sustainable and I hold that this Circular is not applicable in cases where the exact birth date is already known as per proper birth certificate issued by the Registrar of Office of Death and Birth and when not a single fact is in dispute.

7. Accordingly this Special Civil Application succeeds. Respondent Municipal Corporation of Jamangar and the Registrar of Death and Birth Section of the said Municipal Corporation are directed to issue a fresh birth certificate for petitioner No.1 in the name of 'Bhavi' instead of 'Foram' (in Column No.1) mentioning the names of her adoptive parents (petitioners Nos.2 and 3) in Columns Nos.7 and 8 and effecting the change of address in Column No.9 as 195, Kribhconagar, Surat. The aforesaid direction shall be carried out by the concerned officers of the Municipal Corporation, Jamangar at the earliest possible opportunity and preferably on or before 4.5.2000 as the concerned School, where petitioner No.1 'Bhavi' is studying requires the production of her birth Certificate by 5.5.2000. This Special Civil Application is allowed. Rule is made absolute accordingly. No order as to costs. Direct service is permitted.

(M.R.Calla,J)